

DHHS Directive Number 33

Title: Employee Grievance Policy (Revised)
Effective Date: April 1, 2000
Original Effective Date: January 1, 1986
Authority: G.S. 143B-10; Chapter 126

Purpose

The purpose of this directive is to establish a grievance policy and procedure for Department employees. The State Personnel Act (Chapter 126) grants State employees the right to appeal certain matters relating to their employment. The State Personnel Commission, established by that Act, has adopted policies which require the head of each State agency to establish an internal grievance procedure for certain employees subject to the State Personnel Act.

Policy

1. The personnel management philosophy of the Department is to recognize the dignity and value of the individual employee. The Department encourages the prompt and fair settlement of employee grievances through an orderly grievance procedure consistent with applicable laws and policies.
2. Every employee with a permanent appointment shall have the right to present certain grievances arising out of or due to his/her employment in accordance with the conditions and procedures prescribed by the Department. In exercising such right, the employee shall be free from coercion or reprisal by Department management or supervisory personnel. Complaints of such coercion or reprisal shall be directed to the Director of the Division of Human Resources for investigation and resolution.
3. For purposes of this policy, an employee with a permanent appointment means an employee who has satisfactorily completed a prescribed probationary period in a permanent position in the Department or who entered Department employment without having to serve a probationary period.
4. Notwithstanding (2) and (3) above, any Department employee subject to NCGS Chapter 126, regardless of status or length of service, may present a grievance under this policy concerning an alleged unlawful State employment practice as described in G.S. 126-16 and 126-36, or a request to remove alleged inaccurate or misleading material from his/her personnel file in accordance with G.S. 126-25.

5. An employee shall be allowed time off from his/her regular duties as may be necessary and reasonable up to a maximum of 8 hours for the preparation of a grievance under the Department procedure without loss of pay, vacation leave or other time credits. The determination as to necessity and reasonableness shall be made by the appropriate unit or Department management.
6. The Department recognizes an employee's prerogative to secure legal assistance with matters relating to a grievance. However, neither party to a grievance may have an attorney present at a Step 1 or 2 conference or a Step 3 hearing. The grievant shall represent himself or herself and unit management shall select one employee to represent management who is familiar with the matters and issues relative to the grievance.
7. The following matters are grievable under this policy:
 - a. Disciplinary actions specified in NCGS Chapter 126; e.g., discharge, disciplinary suspension without pay, demotion.
 - b. Denials of promotion, training or transfer due to alleged unlawful State employment practices (discrimination or harassment based on age, sex, race, color, national origin, religion, creed, political affiliation or handicapping condition).
 - c. Denials of promotion due to alleged failure of the agency to post notice of the job vacancy pursuant to G.S. 126-7.1(a) or to give the grievant State employee priority consideration pursuant to G.S. 126-7.1(c).
 - d. Objections to alleged inaccurate or misleading material in personnel files.
 - e. Written warnings issued pursuant to the disciplinary action policy specified in the State Personnel Manual.
 - f. Involuntary separations due to unavailability when leave is exhausted.
 - g. Involuntary separations resulting from a reduction in force.
 - h. Denials of RIF priority placement or reemployment consideration in a selection decision.
8. The following matters are not grievable under this policy:
 - a. Matters of inherent management rights. These matters include but are not limited to such areas as Department functions, programs and budgets; standards of service; the utilization of technology; and the assignment and reassignment of staff to positions, duty stations and shifts, except where such transfers involve an involuntary disciplinary demotion.

- b. Employee disagreements with performance reviews and performance pay decisions (denials and/or amounts of performance salary increases). Such concerns shall be reviewed in accordance with DHHS Directive No. 33A (Performance Rating and Pay Dispute Process).
- c. Management-employee counseling sessions and supervisory conferences.
- d. Employee concerns related to the administration of the North Carolina position management and classification system. Such concerns (reallocations of position, etc.) shall be reviewed in accordance with the Department position classification review process.
- e. Placement on investigation with pay.
- f. Complaints of unlawful workplace harassment that do not involve a grievable issue under Item 7. above. Such complaints must, instead, be filed in writing with the division or institution Human Resource office no later than 30 calendar days following the alleged act(s) of harassment. The complaint shall be investigated and a written response provided by management no later than 60 calendar days from receipt of the complaint. Further appeal rights will be provided in management's response.
- g. Matters which are not specifically designated as grievable herein.

Questions as to the applicability of this grievance policy to a particular concern shall be referred to the Director of the Division of Human Resources for a decision. Such decision shall be final except when the employee has a right of appeal to the State Personnel Commission under State law.

- 9. The policy shall not apply to: employees serving in positions listed in or designated as policy-making under G.S. 126-5 (d) except as provided under G.S. 126-5(c); teachers and related educational classes of employees who are subject to the provisions of NGGS Chapter 115C; former Department employees who voluntarily resigned from employment with the Department, with or without notice; or employees with temporary appointments.
- 10. The proposed resolution of a grievance filed under this policy wherein the grievant waives his/her right to further appeal shall be incorporated into a written settlement agreement. All such proposed agreements, regardless of the stage in the grievance procedure at which the settlement is proposed, shall be submitted to the Department Employee Relations Manager for review. Depending on the issues involved, the proposed agreement then will be processed for approval by the appropriate Department official and by the Office of State Personnel or the State Personnel Commission if required by State Personnel Commission rules.

11. It is the responsibility of managers and supervisors at all levels, consistent with the authority delegated to them, to consider and take action promptly and fairly on any employee grievance presented to them under this policy and procedure.
12. It is the responsibility of the Director of the Division of Human Resources to develop policies and to provide the technical and administrative support and coordination necessary to the accomplishment of this policy.
13. The date of receipt of a notice, decision or other document required to be filed or submitted by this policy is the date the notice, decision or other document is actually or constructively received by the person to whom the submission is required. In the case of an unclaimed certified mailing to such person's address of record, the date of the second notice of the mailing to the person from the U. S. Postal Service shall be deemed the date of receipt.
14. A grievant who at any step of the grievance process fails to comply with a reasonable request for information, or with any of the procedures set out in this directive, including failure to appear at a scheduled meeting, conference or hearing, may be deemed to have abandoned his/her appeal. The acts or omissions of any attorney assisting a grievant shall be deemed those of the grievant for purposes of determining compliance with procedures under this policy.

Procedures

Open and effective communication between employee and supervisor is essential to the most productive operation of the Department. All employees are encouraged to resolve problems through informal discussion with the appropriate management or staff. However, an employee who wishes to file a formal grievance on a grievable matter shall present it in accordance with the following procedure. The grievance procedure shall be completed as provided herein within 90 calendar days of the initial filing of a grievance of a dismissal or demotion and within 120 calendar days of the initial filing of all other grievances, unless the grievant agrees to additional time.

STEP 1 - REVIEW BY THE IMMEDIATE SUPERVISOR

- (a) The employee shall submit the grievance first to his/her immediate supervisor on DHHS Form 0660, Employee Grievance Filing Form (see Attachment 1). It must be received by the supervisor and a copy submitted to the division/institution personnel office within fifteen calendar days from the date of the problem's occurrence or from the date the employee knew, or by reasonable diligence should have known, of its occurrence.

Some matters may not be the responsibility of the employee's immediate supervisor (e.g., dismissals; promotions to positions in other units; reduction-in-force separations; denial of RIF priority consideration in a selection decision). The employee shall consult with the unit (division/institution) Human Resource Manager in filing a grievance in such circumstances. The Human Resource Manager shall confer with the Department Employee Relations Manager in determining how the grievance shall be processed.

A grievance of a dismissal shall be initially filed at Step 2, because only the division/institution director has the authority to reverse a decision to dismiss. If the employee's immediate supervisor receives a grievance for which he/she has no responsibility, the grievance shall be forwarded to the person who has responsibility for it within 48 hours.

A grievance of a dismissal shall be received by an authorized person in the unit personnel office within fifteen calendar days of the employee's receipt of written notice of the dismissal.

- (b) The supervisor shall meet with the employee to discuss the grievance and submit a response in writing to the employee and a copy of the response to the unit personnel office within five calendar days of receipt of the grievance. The supervisor may call higher level supervisors and/or personnel staff into the discussion. The supervisor may also consult independently with higher level management or staff before responding to the employee. The supervisor's response shall be submitted in such form as to provide certification of the date it is received by the employee.

STEP 2 - APPEAL TO THE UNIT DIRECTOR

- (a) If the response at Step 1 is not satisfactory to the employee, or if the employee has not received a response within the time limit set for Step 1, he/she may submit the grievance for consideration by the unit (division/institution) director. The employee shall file notice of the grievance on DHHS Form 0660, Employee Grievance Filing Form (see Attachment 1). The notice must be received by an authorized person in the personnel office within five calendar days from the date the Grievant receives or should have received the Step 1 response.
- (b) Upon receipt of the Step 2 appeal, the unit director may review the matter personally or delegate it to another suitable person(s) for review. The grievant and Department employees must comply with reasonable requests for documents and information by the director or designated agent. The review will focus on problem identification, fact gathering, consideration of possible alternatives, and development of possible solutions and their implementation. The unit director shall meet personally or confer by telephone with the grievant before submitting a decision, if specifically requested by the grievant. This responsibility may not be delegated.

- (c) The unit director shall submit a decision in writing to the grievant and appropriate management and supervisory personnel and a copy of the decision to the unit personnel office within ten calendar days from the date the Step 2 appeal was received by an authorized person in the personnel office. The director's decision shall be submitted in such form as to provide certification of the date it is received by the grievant.
- (d) With respect to a grievance of a written warning, the Step 2 decision is the final decision and is not further appealable.

STEP 3 - APPEAL TO THE SECRETARY, DEPARTMENT OF HEALTH AND HUMAN SERVICES

- (a) If the matter is not resolved to the grievant's satisfaction by the decision at Step 2, or if the grievant has not received a decision within the time limit set for Step 2, and the issue is subject to further appeal, he/she may appeal for a review by the Secretary of the Department of Health and Human Services or the Secretary's designee.
- (b) The appeal shall be filed in writing using DHHS Form 0660, Employee Grievance Filing Form (see Attachment 1). The notice must be received by an authorized person in the unit personnel office within five calendar days from the date the grievant received or should have received the Step 2 decision.
- (c) The unit Human Resource Manager shall inform the unit director of receipt of the appeal notice. The Human Resource Manager shall submit the following to the Director of the Division of Human Resources within five calendar days of receipt of the Step 3 appeal notice: a copy of the contested action, the Step 1 and Step 2 appeal notices, unit management's responses thereto, the Step 3 appeal notice, management's response to the Step 3 appeal notice on DHHS Form 0659 (see Attachment 2) and all prior active disciplinary actions issued to the grievant. Unit management shall also send a copy of its response on Form 0659 to the grievant within five calendar days of receipt of the Step 3 appeal notice.
- (d) Upon receipt of the grievant's notice of appeal and unit management's response, the Director of the Division of Human Resources shall determine if the matter(s) raised in the appeal is (are) grievable and if the appeal is timely filed. If the appeal is deficient in either regard, the Director shall inform the grievant and unit management in writing.

If the appeal is determined to be both grievable and timely filed, the Director shall determine whether there will be a documents review or Step 3 hearing.

- (e) Grievances assigned for a documents review shall be processed as follows:

- (1) The Director will assign the grievance to an impartial Division staff member. The staff member shall inform the respective parties by letter of the issue(s) to be resolved, which party shall have the burden of proof (as provided in (f) (8) hereunder), what additional documentary information is required, and the date additional information must be received.
 - (2) The assigned staff member shall review the documentation and submit a memorandum report to the Secretary or Secretary's designee. The report shall include an evaluation of the evidence and a recommended course of action. The staff member may secure any additional information he/she deems necessary to provide a complete and accurate memorandum report.
 - (3) Upon receipt of the report, the Secretary's or his designee's review and decision shall be in accordance with the provisions established for appeals assigned for hearing. [See (f) (11) below.]
- (f) Grievances assigned for hearing shall be processed as follows:
- (1) Scheduling the hearing

An impartial hearing officer shall be assigned to hear the grievance.

The hearing officer shall schedule the hearing to commence within a reasonable time after receipt of the appeal notice. The hearing officer may grant a continuance to either party upon a showing of good cause, provided the parties agree that the maximum time for completing the grievance procedure can be extended. A hearing also may be continued to meet the scheduling demands of the hearing officer.
 - (2) Witnesses at the hearing

Upon written request from the hearing officer, each party shall submit a proposed witness list to the hearing officer and other party containing a brief statement of the nature of the testimony of each witness. The proposed witness list must be received by the hearing officer and other party by the deadline set forth in his/her request. The use of character witnesses is discouraged and testimony of a repetitive nature should be avoided. The hearing officer shall then determine whether the proposed witnesses are necessary for a fair hearing. No additions to the list of witnesses contained in the formal notice of hearing will be allowed without notice to the non-moving party and approval by the hearing officer. Witnesses may be deleted from the respective lists prior to and at the hearing. [See (f) (4) below.]

Each party is responsible for notifying their witnesses of the date and place of hearing and insuring their presence at the hearing. The appearance and testimony of witnesses are not subject to subpoena for a Step 3 hearing.

Unit management shall release Department employees from duty as necessary to allow them to appear as voluntary witnesses for the grievant.

(3) Documentary evidence

Copies of documents to be tendered by the parties as evidence in a Step 3 hearing must be numbered and submitted to, and received by, the hearing officer and the opposing party by the date specified by the hearing officer, provided that with the consent of the hearing officer, the parties may submit such documents at a later date. Attached to each document shall be a cover sheet with the document number and a short statement describing the document. Documentary evidence is not subject to subpoena for a Step 3 hearing.

(4) Formal notice of hearing

The hearing officer shall send a formal notice of the hearing to the parties. The notice shall confirm the time and place of the hearing, specify the issue(s) to be heard, and list each party's witness(es).

(5) Access to information

The hearing officer, as agent of the Secretary or Secretary's designee, shall have access to information, documents, and records maintained by management that he/she deems necessary and relevant to a review of the matter(s) at issue. Management shall comply with such requests made before, during, or after the hearing.

Access to medical or other confidential records maintained by the Department of Health and Human Services or its units shall be in accordance with applicable State and federal statutes, rules and regulations.

Unit management shall cooperate with the grievant's request for access to information in his/her personnel file as provided under General Statute 126-24 and to other relevant public records. Unit management shall also respond to reasonable requests for copies of such information prior to the hearing. Questions as to the reasonableness of a particular request may be referred to the Director of Human Resources for final decision.

(6) Settlements

Prior to the hearing the hearing officer shall confer with the parties to determine their interest in attempting a resolution of the issues without going to hearing. The parties' participation in such discussion is voluntary. Management settlement offers must be authorized by unit management and consistent with State and Department policies and procedures.

All settlements of Step 3 grievances shall constitute the final disposition of the matter and a waiver of further appeal rights and shall be processed as required under policy item 10.

(7) Nature of the hearing

- (A) The hearing is not judicial or quasi-judicial, but is an administrative, investigative proceeding. It shall be conducted and controlled by the hearing officer in a structured yet informal manner. The rules of evidence shall not apply; witnesses shall not be sworn.
- (B) The hearing shall be held at or near the division or institution facility where the grievant is/was employed. Exceptions to this requirement may be made for good cause at the discretion of the hearing officer.
- (C) The hearing is confidential and only those individuals listed in the notice of hearing or otherwise approved by the hearing officer will be admitted to the hearing.
- (D) The hearing officer will tape record the hearing for use in preparing a report to the Secretary or Secretary's designee. Such recording shall not constitute an official record of the hearing. Such recording is confidential and shall be erased after its use in preparing a report to the Secretary or designee. No other recording or transcription by any party shall be allowed.
- (E) The hearing officer shall control the order and flow of the proceedings. This includes the authority to: modify the presentation sequence; interrupt a presentation to seek clarification of information being presented; determine whether particular information is repetitious or irrelevant; sequester witnesses; conduct an independent investigation or review of evidence where warranted; and make rulings on other procedural or evidentiary questions where appropriate. The hearing officer's ruling(s) shall be binding in the proceedings.

(8) Burden of proof

- (A) Adverse Personnel Action. Management has the burden of proving, by the greater weight of the evidence, that there was just cause for an adverse personnel action issued to an employee. [dismissals, demotions, disciplinary suspensions without pay, written warnings]
 - (B) Discrimination. Where discrimination is alleged, the grievant has the initial and overall burden of proof.
 - (C) Involuntary Separation Due to Unavailability When Leave is Exhausted. Management has the burden of proving, by the greater weight of the evidence, that the grievant was unavailable, that Management considered accommodations proposed by the grievant for his/her unavailability and that Management was unable to provide the proposed accommodations or other reasonable accommodations.
 - (D) Generally, in all other cases, the burden of proof is on the grievant to show by the greater weight of the evidence that management abused its discretion by acting contrary to law or policy or failing to act as required by law or policy.
 - (E) In those cases where the grievant presents multiple issues for review, the burden of proof may change from issue to issue. Any questions regarding the burden of proof on a particular issue will be finally resolved by the hearing officer.
- (9) Hearing format
- (A) Introduction. Prior to the presentation of evidence, the hearing officer shall introduce the parties, and any other persons present; explain the purpose of the hearing and the function of the hearing officer's report; describe the procedures to be followed; and summarize the issues to be resolved. Only one Management representative is allowed in the hearing room, unless otherwise agreed to by the grievant. Each party may make an opening statement summarizing the evidence they intend to present and the conclusions they feel can be drawn from that evidence, although such opening statements may be waived without prejudice.
 - (B) Presentation of Evidence. Generally, the party with the burden of proof shall make the first presentation. In those

cases where multiple issues are presented for review, the hearing officer shall determine the order of presentation.

Each presentation should include the party's own statements as well as statements of any witnesses. At the end of each person's statements he/she may be questioned by the management representative and/or grievant.

After all witnesses and documentary evidence have been presented, each party may make a closing statement, although closing statements may be waived without prejudice.

- (C) Conclusion. The hearing shall be concluded by the hearing officer when he/she determines that all relevant information and statements have been presented. At some point before the hearing is adjourned the hearing officer shall describe the subsequent steps in the review and notification process.

Following the hearing, the hearing officer may secure any additional information he/she deems necessary to provide the Secretary or Secretary's designee a complete and accurate report.

(10) Report to the Secretary or Designee

The hearing officer shall submit a written report to the Secretary or Secretary's designee containing findings of fact, the hearing officer's conclusions, and a recommended course of action.

(11) Review and decision by the Secretary or Designee

- (A) The Secretary or his/her designee shall review the hearing officer's report and recommendations. The Secretary or designee may secure additional information that he/she deems necessary to render a decision.
- (B) The Secretary may adopt the hearing officer's recommendation in whole or in part, or may choose any other course of action that he/she deems appropriate.
- (C) The Secretary's decision shall constitute the final Department decision. It shall be in writing and mailed via certified mail, return receipt requested, to the grievant at his/her address of record.

APPEAL TO THE STATE PERSONNEL COMMISSION

All grievances for which a right of direct appeal to the State Personnel Commission is not provided under a provision of Chapter 126 of the North Carolina General Statutes must be first presented under the Department grievance procedure until a final Department decision is rendered.

If a present or former career employee is not satisfied with the final Department decision, he/she may appeal the matter as provided below as long as he/she has a right of appeal under NCGS Chapter 126. The final Department decision shall include notice to the present or former employee of any such appeal right. (Disciplinary warnings are not appealable to the State Personnel Commission.)

Grievances for which a direct right of appeal to the State Personnel Commission is provided under the State Personnel Act may, at the present or former employee's option, be initially presented under the Department grievance procedure or directly filed at the State Personnel Commission level as provided below.

To appeal to the State Personnel Commission a written petition for a contested case hearing must be filed with the Office of Administrative Hearings no more than thirty calendar days from the date of receipt of the final Department decision or the date of the act complained of under G.S. 126-36 or of the failure to act pursuant to G.S. 126-7.1. The request should be addressed to: Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714. Notice of the filed petition must also be served on a DHHS process agent. The name of a duly appointed process agent can be determined by contacting the DHHS Office of Legal Affairs, 2005 Mail Service Center, Raleigh, NC 27699-2005 or calling (919) 733-6920. Should an appeal not meet the procedural requirements of the law, the Office of Administrative Hearings will work with the petitioner to perfect the appeal. Once perfected, the appeal will be assigned to an Administrative Law Judge. The Administrative Law Judge will eventually issue his/her recommendations to the State Personnel Commission. The State Personnel Commission will render the final administrative decision.

APPROVED:

H. David Bruton, M.D.
Secretary
Department of Health and Human Services

Attachments

Attachment 1

North Carolina Department of Health and Human Services
EMPLOYEE GRIEVANCE FILING FORM

Check **ONE** only: ☐ Step 1 Appeal ☐ Step 2 Appeal (see 12 below) ☐ Step 3 Appeal

File Step 1 Appeal with Immediate Supervisor (Copy to Unit Personnel Office).
File Step 2 and Step 3 Appeals with Authorized Person in the Unit Personnel Office.

1. Name (First, Middle, Last): _____
2. Home Address (include zip code): _____
3. Home Telephone (include area code): _____ - _____ - _____
 (If none, list a telephone number where you can be reached)
4. Business Telephone: _____ - _____ - _____
5. Present (or Former) Position Title: _____
6. Classification and Salary Grade: _____
7. Division/Institution: _____ 8. Work Unit/Department: _____
9. Grievance (e.g., written warning, dismissal, demotion, denial of promotion, etc.):

10. Brief statement of issues and facts on which grievance is based (attach additional sheet if necessary):

11. Statement of relief desired (attach additional sheet if necessary):

12. **Step 2 Only:** Do you want a conference with Division/Institution Director? ☐ Yes ☐ No
13. Grievant's Signature: _____ 14. Date: _____

***The Following to be Completed by the Immediate Supervisor at Step 1 and
 an Authorized Person in the Unit Personnel Office at Steps 2 and 3.***

1. Received by (Name and Title): _____
2. Date Received: _____

Attachment 2

North Carolina Department of Health and Human Services

**Management Response to
Step 3 Appeal Notice**

1. Division/Institution: _____
2. Grievant's Name (First, Middle, Last) _____
3. Sex: _____ 4. Race: _____ 5. Date of Birth: _____ 6. Soc. Sec. No. _____
7. Date of Entry on Duty: _____ 8. Total months of continuous state service at time of action under appeal: _____
9. Grievant's Present (or Former) Classification and Salary Grade: _____
10. Work Unit/Department: _____
11. Brief response to employee's grievance: _____

12. If grievance is based on dismissal, demotion or disciplinary suspension, date of pre-disciplinary conference: _____
13. Is grievance timely filed? ☐ Yes ☐ No (If No, explain; attach receipt certification)

14. State any objections to grievability of matters raised in the appeal:

15. Person who will represent management at hearing (**only one representative allowed**):
 - a. Name: _____
 - b. Title: _____
 - c. Telephone Number: (____) _____
16. Response Prepared by:
 - a. Name and Title: _____
 - b. Signature: _____ Date: _____

Department of Health and Human Services

EMPLOYEE RELATIONS POLICY

1. It is the responsibility of every division/institution director to insure that all managers, supervisors, and employees under his/her jurisdiction are informed of the Department grievance policy and procedure and their rights and obligations thereunder.
2. It is the responsibility of the Human Resource Manager in each division/institution to notify current employees of any substantive changes in Department and State Personnel Commission policy no later than 30 days after the effective date of the changes, except that employees shall be notified of the most recent substantive changes in the Employee Grievance Policy at least 30 days prior to their effective date. New employees shall be provided a copy of the current Employee Grievance Policy within 30 days of their appointment. At least one updated copy of the State Personnel Manual shall be available to employees at a known accessible location at each Department facility.
3. Effective January 1, 1996, the period of suspension for all Department employees who are placed on disciplinary suspension without pay shall be one full work week.
4. The following shall be the procedure for issuing written warnings to Department employees:
 - a. Tell the employee that he/she is being issued a written warning and not a non-disciplinary action such as counseling.
 - b. Tell the employee the specific issues that are the basis for the warning.
 - c. Tell the employee what specific improvements or corrections must be made to address the issues.
 - d. Tell the employee the time frame for making the required improvements or corrections.
 - e. Tell the employee the consequences for failing to make the required improvements or corrections.
 - f. Include the above information in the warning itself along with the employee's appeal rights.
 - g. Provide the employee a copy of the warning in such form as to provide certification of the date it is received by the employee.
 - h. Provide the employee a copy of DHHS Directive No. 33 (Employee Grievance Policy).

5. Any disciplinary action (other than dismissal) issued to an employee on or after October 1, 1995, will remain "active" until:
 - a. the employee's supervisor or manager notes in the employee's personnel file that the reason for the action has been resolved or corrected; or
 - b. the purpose of a performance based action has been achieved as evidenced in the employee's latest overall performance summary following the action by a summary performance rating of "Good" or better and a rating of "Good" or better in the performance area cited in the action; or
 - c. 18 months have passed since the action, the employee does not have another active warning or other disciplinary action which occurred during the 18 months and the employee's supervisor or manager has not issued to the employee notice of extension of the action prior to the expiration of the 18 months.

An employee who has received a demotion or disciplinary suspension that has ceased to be "active" as provided herein is not entitled to restoration to the position held prior to the demotion or to any lost salary resulting from the demotion or disciplinary suspension or to removal of the action from the employee's personnel file, unless such removal is in accord with the division's or institution's policy regarding removal of disciplinary actions from personnel files. Such disciplinary action shall not, however, be included in the number of prior actions required for a performance based dismissal.

6. Management at each division and institution shall be responsible for determining if, when and under what circumstances disciplinary actions should be removed from employee personnel files and insure that such information is communicated to all division/institution employees.
7. The Human Resource Manager of each division/institution is the custodian of the personnel files. Employees shall be entitled to view their own personnel files (except for letters of reference solicited prior to employment) during reasonable working hours. Employees who wish to view or make copies of their personnel files shall make their request to the division/ institution Human Resource Manager and be prepared to submit sufficient proof of their identity and to pay a reasonable fee for copying the requested documents.

APPROVED:

H. David Bruton, M.D.
 Secretary
 Department of Health and Human Services

